**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**INCOME TAX REFERENCE NO. 182 OF 1995**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

**HONOURABLE MR.JUSTICE M.R. SHAH**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

**COMMISSIONER OF INCOME TAX - Applicant(s)**
**Versus**
**GLASS LINED EQUIPMENTS CO.LTD. - Opponent(s)**

==========

**Appearance :**
MR. B.B. NAIK for Applicant(s).
NONE for Opponent(s).

==========

**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**
**and**
**HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 26/07/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1. Heard Mr.B.B.Naik, learned Counsel for the Revenue.

None for the opponent though the Office Report shows that the assessee is served.

2. At the instance of the Revenue, the Tribunal has referred the following questions for our opinion :

> *"Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance of bank guarantee commission of Rs.20,000/- when the CIT(A) had given a finding that the guarantee commission represented personal guarantee by the Director and was not an expenditure incurred for business?"*

3. The facts are that the Bank, while providing loan facility to the Company, required the Company that its Director should stand personal guarantee by submitting a Bank Guarantee. The Director, accordingly, furnished the Bank Guarantee. A sum of Rs.20,000/- was required to be paid towards the Bank Guarantee. The Company, ultimately, reimbursed the Director by paying the sum of Rs.20,000/- to the said Director and claimed deduction from its returned income. The Income-Tax Officer, so also the CIT (Appeals), observed that the guarantee commission represented personal guarantee by the Director and was not an expenditure incurred for

business, however, the Income-Tax Appellate Tribunal observed that the guarantee was furnished in favour of the Company and if the Company had spent the amount of guarantee commission, then, the said commission paid by the Company would be taken to be the business expenditure.

4. The learned Counsel for the Revenue, however, contended before us that the Tribunal was unjustified in allowing the deduction.

5. After hearing the learned Counsel for the Revenue, we are of the opinion that the Bank Guarantee was ultimately to be furnished in favour of and was in the interest of the Company. For obtaining such a Bank Guarantee, if the Company was spending some amount, then, such an expenditure would come under the phrase “business expenditure”. In our considered opinion, the Tribunal was justified in deducting the said amount from the net/returned income of the Company. The Reference is answered against the interest of the Revenue and in favour of the assessee. The Reference stands disposed of accordingly. No costs.

[***R.S.Garg, J.***]

[***M. R. Shah, J.***]

*kamlesh**